

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED

CLERK'S OFFICE

2004 JUL 29 P 1:00

U.S. DISTRICT COURT
DISTRICT OF MASS

Johnny Nilsen, Kieran Kelly,
William Ryan, Karl Seemen,
Sean Sharkey, Fernando Suazo,
Don Abad, Charles Smith, and
Paul McGee,

Plaintiffs

vs

Celestial Dawn, Inc. in
persona and the F/V PROSPERITY,
in rem

Defendant

Civil Action
No.: 03-12449MLW

PLAINTIFFS' MOTION TO VACATE ORDER OF DISMISSAL

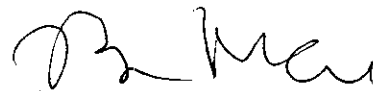
Now come the plaintiffs in the above-entitled matter and respectfully move this Honorable Court for an order vacating an Order of Dismissal entered by this Honorable Court on July 27, 2004. As grounds therefore, plaintiffs state the following:

1. This is an action arising, principally, out of a ship owner's failure to pay crews wages to members of the crew of the F/V PROSPERITY.
2. The owner of the vessel, although duly served, has never answered the Complaint, nor has the ship owner availed itself of its opportunity under the standing order of this court on April 28, 2004, to contest the entry of default.
3. The plaintiffs have endeavored, in good faith, to comply with the court's order of April 28, 2004. Specifically, because all of the crew members are now scattered across the country, most continuing to work in the very fluid commercial fishing industry, it has been difficult to obtain affidavits from all the plaintiffs involved regarding their damages. Specifically, all of the affidavits were prepared and sent out on or about May 19, 2004, but only three have been received back.
4. Plaintiffs' counsel has subsequently attempted to follow up where possible, with telephone calls, etc., to try to track down the remaining affidavits. See Affidavit of Brian S. McCormick, Esq., hereto attached as Exhibit "A".

5. Plaintiffs' counsel remains confident that each of these individuals will be located, such that they may sign affidavits demonstrating their damages. Efforts continue in this regard. Unfortunately, because of the nature of the industry, many of the individuals are at sea, much, or all of the time, and move about the country quite frequently. In some instances, plaintiffs' counsel simply has to wait until he receives a telephone call from the individuals who do, upon occasion, call the office. See Exhibit "A" attached hereto.
6. Based on the foregoing, the plaintiffs respectfully request that the Order of Dismissal be removed, and that the plaintiffs be given until October 1, 2004 to finalize their Request for Default Judgment. Plaintiffs' counsel will notify, at the last known address, all plaintiffs that affidavits must be received by that date or risk dismissal.

WHEREFORE, the plaintiffs respectfully requests that the Order of Dismissal be vacated, and that the plaintiffs be given until October 1, 2004 to comply with the Court's standing order regarding motions for default judgment, as articulated in the Court's order of April 28, 2004.

Plaintiffs,
By their attorney,



BRIAN S. MCCORMICK, ESQ.
BBO# 550533
Orlando & Associates
One Western Avenue
Gloucester, MA 01930
(978) 283-8100

Date: July 28, 2004

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Johnny Nilsen, Kieran Kelly,
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Defendant

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AFFIDAVIT OF BRIAN S. MCCORMICK, ESQ.

1. I, Brian S. McCormick, am counsel of record with respect to the above-referenced case.
2. In April 2004, a Notice of Default was issued, the defendants having failed to answer.
3. Following the issuance of the Default, I prepared multiple affidavits (there are eight (8) plaintiffs in this action), one per plaintiff, for signature and filing with the Court in accordance with its standing order dated April 28, 2004. These affidavits were sent to the multiple plaintiffs, at their last known addresses, on May 19, 2004. To date, only three of the eight affidavits have been returned.
4. This action arises principally, out of the failure of a ship owner to pay crews' wages. The various crew members who maintain claims reside all over the country at this point, including Pennsylvania, Louisiana and Alaska, and one is working in Mexico. I have spoken with some of the crew members who have not returned their affidavits, and have indicated that, due to various circumstances, they had not received their affidavits, but were in the process of trying to track same down.
5. The failure to file the necessary affidavits is through no

Exhibit "A"

neglect on the part of my office, but rather simply because of the difficult logistics of obtaining affidavits from commercial fishermen, literally fishing across this country, and in others, for signature.

Sworn to under the pains and penalties of perjury this 28th day of July, 2004.


BRIAN S. MCCORMICK, ESQ.

Cases/FVPROSPERITY/PltfsMoVacDismissal

Exh. "A"

ORLANDO
& ASSOCIATES



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July 28, 2004

2004 JUL 29 P 1:00

U.S. DISTRICT COURT
DISTRICT OF MASS

Clerk's Office
United States District Court
1 Courthouse Way
Boston, MA 02210

RE: Johnny Nilsen, Kieran Kelly, William Ryan, Karl
Seemen, Sean Sharkey, Fernando Suazo, Don Abad,
Charles Smith and Paul McGee vs
Celestial Dawn, Inc. in persona and the F/V
PROSPERITY, in rem
Civil Action No.: 03-12449MLW

Dear Sir/Madam:

In connection with the above-captioned action, please
find enclosed the following document:

Plaintiffs' Motion to Vacate Dismissal.

Kindly file and proceed accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian S. McCormick".

BRIAN S. McCORMICK, ESQ.

BSM/rk

Enclosure

Cases/FVPROSPERITY/Letters2.011

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